IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.1423 of 2005

Date of Decision : 15.10.2007

Gurdwara Shahid Baba Sangat Singh through its President .....Petitioner

versus

Smt.Surinder Kaur and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.Veneet Sharma, Advocate for the petitioner.
Mr.B.R.Mahajan, Advocate for the respondents.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order passed by the learned Executing Court on 29.9.2001 whereby the objections filed by the petitioner were dismissed and the order dated 8.9.2004 whereby the order of the learned Executing Court was maintained in appeal.

Respondent No.1-decree holder filed a suit for permanent injunction on 3.1.1983 claiming that she is in peaceful possession of the land measuring 808 square yards and for mandatory injunction directing the defendants for demolishing and removing the wall described as AB built by the defendants in front of the said plot. It is alleged that the plaintiff had purchased the said land from one Mohan Singh vide registered sale deed dated 24.4.1974.

On behalf of the defendants, a joint written statement was filed denying the ownership and possession of the plaintiff. It was alleged that Khasra No.537 is measuring 4 kanals 6 marlas and that even if any sale is proved to be executed in favour of the plaintiff, the said sale does not effect

the right of the property of Gurdwara Shaheed Baba Sangat Singh Maqbulpura, Amritsar as the land under Khasra No.537 is in actual possession of Gurdwara Shaheed Baba Sangat Singh and that said Gurdwara has been built up for the last more than 20 years.

The learned trial Court dismissed the suit vide judgment and decree dated 13.5.1988. The plaintiff has amended the appeal so as to claim a decree for mandatory injunction for directing the removal of the wall/Thara constructed on the property in dispute. The learned First Appellate Court on the basis of the report of the Local Commissioner, Exhibit P-2 and site plan Exhibit P-3, returned a finding that the only wall was constructed by the defendants after filing of the suit. The plea of the defendants that they have constructed a Gurdwara was found to be false. The appeal was, thus, allowed by the learned First Appellate Court vide judgment and decree dated 27.7.1993. Para No.7 of the judgment passed by the learned First Appellate Court reads as under:-

> "7. In this case, Mr.Subodh Kumar, Advocate was appointed as Local Commissioner who prepared his report Ex.P.2 and site plan Ex.P.3 and attendance report Ex.P-4. He has reported that on the right side of the demised plot, there is a cycle shop and on the left side there is a shamlat land. Regarding the spot, it is said that a wall upto the height of 2 ft. has been constructed and that the construction was going on at the time of his visit. Bricks etc. were also lying at the spot. There was an open space on one side of the wall. The expert has shown the construction of a wall and a Tharra over the property in dispute. It is not disputed that the property in dispute, as shown in the site plan Ex.P-3, is comprised of khasra No.537 min. From the report

> of the local commissioner, it stands proved that only wall was constructed by the defendants after the filing of the suit. The defendants have taken the plea that they had constructed a Gurdwara but this fact has been found to be false."

On 22.12.1994, the decree holder sought execution of the decree wherein the objections were filed by the petitioner through Balwant Singh on 25.9.1996. The said objections were decided on 27.8.1998 when the counsel for the Decree Holder made a statement that the Decree Holder do not want to take possession of the property where a building of Gurdwara consisting of a Sewadar room, a room for Shri Niwas Asthan of Shri Guru Granth Sahib and Langar Hall/Kitchens is situated. In view of the said statement, the objection petition was dismissed by the learned Executing Court having rendered infructuous, vide order dated 27.8.1998, . The order dated 27.8.1998 reads as under:-

> "Shri K.S.Rekhi, Advocate, had made a statement that at this stage they do not want to take possession of the property where building of Gurdwara consisting Sewadar room and room for Shri Niwas Asthan of Shri Guru Granth Sahib and Langer hall/kitchens is situated, as detailed in para No.2 of the ejectment petition. In the light of the statement given by Shri K.S.Rekhi, Advocate, the objection petition has become infructuous. Let warrant of possession be issued for 26.9.1998."

The warrants of possession were ordered to be issued for the remaining land. Thereafter, another set of objections was filed on 12.6.1999 pointing out that 12 shops were constructed on the site in dispute and,

therefore, the warrant of possession cannot be issued in view of the construction raised.

A perusal of the above facts shows that initially the stand of the petitioner was that the Gurdwara stands constructed. But the said stand was not believed which is evident from the report of the Local Commissioner relied upon by the learned First Appellate Court in para No.7 of its judgment. At that point of time, it was found that only a wall and Thara is constructed and decree for mandatory injunction was granted in favour of respondent No.1-decree holder for removal of the wall and Thara constructed on khasra No.537. It appears that thereafter the petitioner was successful in raising construction of Gurdwara in respect of which the Decree Holder made a statement on 27.8.1998. Still later, the petitioner has raised construction of 12 shops in respect of which the present Objection petition has been filed. It is, thus, apparent that construction has been raised on the land which is subject matter of challenge in the suit, during the pendency of the suit. All such constructions raised cannot effect the rights of the decree holder. Instead of complying with the decree passed, the petitioner has raised construction. Any such construction cannot confer any legal and equitable right in favour of the petitioner.

The argument raised by learned counsel for the petitioner that the Gurdwara was not party to the decree, is not tenable. 11 persons were impleaded as defendants, who were trying to raise construction. The stand of the defendants was that in fact, the Gurdwara stands constructed. The present revision petition has been filed on behalf of the Gurdwara through its President Balwant Singh. Balwant Singh was one who filed the objections earlier on 25.9.1996 on behalf of the petitioners. After raising

such objections, another set of objections has been filed. Even if the Gurdwara was not a party, still the construction has been raised during the pendency of the suit. Such construction is hit by doctrine of lis pendens. Still further, it was the stand of the defendants that Gurdwara stand constructed. Such stand was not believed. Therefore, to assert such facts again is not permissible.

Consequently, I do not find any illegality or irregularity in the orders passed by the Courts below which may warrant interference of this Court in exercise of its revisional jurisdiction.

The revision petition stands dismissed.

15-10-2007 (HEMANT GUPTA)
*mohinder JUDGE